

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 PM-07 INR-10 L-03 NEA-10

NSAE-00 PA-04 RSC-01 PRS-01 SP-03 TRSE-00 SAJ-01 EB-11

COME-00 OMB-01 DODE-00 SS-20 NSC-07 SAM-01 H-03

ACDA-19 SSO-00 NSCE-00 USIE-00 INRE-00 DRC-01 /129 W

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FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 1632

INFO USMISSION NATO BRUSSELS

CINCUSAREUR HEIDELBERG

CINCUSAFE RAMSTEIN

CINCEUR VAIHINGEN

C O N F I D E N T I A L SECTION 01 OF 03 BONN 05613

DEPT PASS TREASURY AND DOD IMMEDIATE

E.O.11652: GDS

TAGS: EFIN, GW

SUBJECT: OFFSET - AIRFIELD LANDING FEES AND UTILIZATION
CHARGES, AND LAND TAXES

REF: BONN 5442

1. SUMMARY: GOVERNMENTS APPROACHED THIS SUBJECT FROM
DIFFERENT SIDES, FRG SEEKING TO RESOLVE AND PUT ASIDE
ITEMS REPRESENTING IRRITANT, USG SEEKING TO HAVE ONLY
PAYMENTS OF RECOGNIZED OBLIGATIONS TO FRG CREDITED
AGAINST DM 20 MILLION OFFSET. WE HAVE DIFFICULTY
ACCEPTING INCLUSION OF DISPUTED ITEMS IN OFFSET AND
HAVE SUBMITTED US DRAFT WHICH FRG HAS NOT YET
ACCEPTED. IT IS POSSIBLE FRG WILL OFFER TO COVER
PAST AND FUTURE ITEMS IN THIS CATEGORY, WHICH WE MIGHT
IN TIME BE FORCED TO PAY. END SUMMARY.

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2. THERE IS FUNDAMENTAL DIFFERENCE IN CONCEPT

CONCERNING PURPOSE FOR WHICH DM 20 MILLION IS TO BE USED. FRG SEES PURPOSE OF THIS ITEM AS REMOVING LONGSTANDING IRRITANT THROUGH FRG ASSUMPTION OF PAYMENTS OF ITEMS ON WHICH BOTH GOVERNMENTS DISAGREE, INCLUDING WAIVING FRG CLAIMS TO LAND TAXES BACK TO 1963. FRG DRAFT THUS ORIGINALLY SPOKE OF FEES AND CHARGES PAYABLE BY US AND FRG WAIVER OF REIMBURSEMENT OF LAND TAXES. US VIEW IS THAT AS US DOES NOT RECOGNIZE OBLIGATION TO MAKE PAYMENTS OF LAND TAXES EXCEPT ON FAMILY HOUSING, AND HAS NOT AGREED TO ANY OBLIGATION TO PAY INCREASE IN RATES FOR LANDING AND USES AT RHEIN MAIN OVER 1959 AGREEMENT AND OVER CURRENT STUTTGART/ECHTERDINGEN AGREEMENT, CREDITING BY FRG OF WAIVER OF THESE TAXES OR INCREASES AGAINST OFFSET WOULD NOT REPRESENT TRUE BALANCE OF PAYMENTS OFFSET. MOREOVER, US IS CONCERNED THAT CREDIT ABOVE AGAINST OFFSET WOULD PREJUDICE US LEGAL AND NEGOTIATING POSITION AFTER 30 JUNE 1975 OR AFTER LAST OFFSET AGREEMENT CONTAINING THIS ITEM RUNS OUT, LEAVING US HAVING IMPLICITLY RECOGNIZED OBLIGATION TO PAY LAND TAXES ON NON-APPROPRIATED FUND FACILITIES (NAF) AND POSSIBLY OTHER FACILITIES AND LEAVING US WITH THE RATES FOR AIRFIELD LANDINGS AND USES AS THEY WERE LAST OFFSET BY FRG AS THE STARTING POINT IN FUTURE NEGOTIATIONS ON PAYMENTS FOR AIRFIELD/LANDINGS AND USES. AFTER RECOGNITION OF FUNDAMENTAL PROBLEM, WORKING GROUP DISCUSSED FRG AND US DRAFTS AND IMPROVED EACH AS MUCH AS POSSIBLE TO TAKE ACCOUNT OF POSITION OF OTHER. HOWEVER, BEFORE THESE DRAFTS WERE TO BE DISCUSSED IN PLENARY, FRG REPS INFORMALLY INDICATED THAT TO SHOW THEIR BONA FIDE INTENTIONS TO LAY THESE BASIC PROBLEMS TO REST, THEY WOULD BE WILLING IN CONTEXT OF THIS OFFSET AGREEMENT TO AGREE THAT US WOULD INDEFINITELY BEYOND 30 JUNE 1975 BE RELIEVED FROM FRG CLAIMS FOR REIMBURSEMENT OF LAND TAXES AND PAYMENT FOR AIRFIELD LANDING FEES AND UTILIZATION CHARGES. IN ANTICIPATION OF THIS GERMAN FALLBACK, US SIDE DRAFTED TEXT OF TWO PARAS TO PROVIDE FOR SUCH FRG RELINQUISHMENT OF THEIR CLAIMS, BOTH PAST AND FUTURE, CONFIDENTIAL

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AND THIS TEXT WAS PASSED TO FRG REPS, BUT NOT DISCUSSED AT MEETING. FULL DISCUSSION OF THIS ITEM REMAINS FOR APRIL 10. INFORMAL REACTION OF FRG FINANCE MINISTRY REPS WAS, HOWEVER, NOT NEGATIVE TO US DRAFT FOR RELIEF BEYOND 30 JUNE 1975, ALTHOUGH THEY EXPRESSED PRELIMINARY PREFERENCE FOR ADDITION OF AN ITEM IN PROTOCOL NOTE TO FRG DRAFT OF BASIC MINUTE PROVISION THAT WOULD READ ALONG FOLLOWING LINES:

BEGIN QUOTE: THE FRG DECLARES THAT THE ARRANGEMENTS
SET OUT IN SECTION 3(A) OF THE MINUTE SHALL APPLY
ALSO FOR THE PERIOD AFTER 30 JUNE 1975. END QUOTE.
US REP INFORMALLY POINTED OUT THAT AS PROTOCOL NOTE
IS INTENDED TO CLARIFY BASIC MINUTE, IT DOES NOT

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FM AMEMBASSY BONN

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C O N F I D E N T I A L SECTION 02 OF 03 BONN 05613

APPEAR TO BE APPROPRIATE PLACE FOR COMMITMENT INTENDED
TO EXPAND ON ARRANGEMENTS IN BASIC MINUTE, AND THAT
THIS IDEA IN MORE PRECISE FORMULATION SHOULD
BE PLACED INTO BASIC MINUTE ITSELF. WHILE WE HAVE
IMPRESSION THAT FRG IS HEARTILY TIRED OF THE LEGAL AND
PAYMENT DIFFICULTIES ASSOCIATED WITH THESE DISPUTED
ITEMS, WE ARE NOT CERTAIN TO WHAT EXTENT FRG
WILLINGNESS TO ASSUME THESE PAYMENTS FOR ENTIRE PAST
AND INDEFINITE FUTURE MAY STILL BE TIED TO
EXPECTATION OF US GIVE ON OTHER UNRESOLVED ISSUES OM
IN OTHER PARTS OF THE OFFSET AGREEMENT. FOLLOWING ARE

THREE DRAFTS MENTIONED ABOVE, EACH FOLLOWED BY
US DELEGATION COMMENTS:

GERMAN DRAFT: BEGIN QUOTE:

A) DURING THE PERIOD UP TO 30 JUNE, 1975,
THE GOVERNMENT OF THE FRG WILL PAY THE
LANDING FEES AND UTILIZATION CHARGES FOR
THE USE OF GERMAN CIVILIAN AIRFIELDS BY
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AIRCRAFT EMPLOYED IN THE SERVICE OF THE
UNITED STATES FORCES.

B) IN ADDITION, THE GOVERNMENT OF THE
FRG WAIVES THE REAL ESTATE TAXES CLAIMED
BY THE FRG UNDER GERMAN LAW ON
ACCOMMODATIONS USED BY NON-APPROPRIATED
FUND ORGANIZATIONS OF THE UNITED STATES
FORCES.

C) THE FUNDS TO BE MADE AVAILABLE FOR THE
ABOVE-MENTIONED PURPOSE BY THE
GOVERNMENT OF THE FRG ARE ESTIMATED AT A
LUMP SUM OF DM 20 MILLION. END QUOTE

THE PROTOCOL NOTES ASSOCIATED WITH THE
GERMAN DRAFT WOULD READ: BEGIN QUOTE

A) THE ARRANGEMENT AGREED TO UNDER PARAGRAPH
3 OF THE MINUTE IS BASED ON THE UNDERSTAND-
ING THAT THE GOVERNMENT OF THE FRG ALSO
WAIVES ITS CLAIMS TO REIMBURSEMENT OF LAND
TAX PAYMENTS MADE BY IT IN THE TIME BEFORE
1 JULY 1973. THE SAME APPLIES TO FUNDS WHICH
STILL REMAIN TO BE PAID FOR THE TIME
BEFORE 1 JULY 1973.

B) INsofar as payments have been made by
the GOVERNMENT OF THE US OF A, THE MATTER
WILL BE LEFT AT THAT.

C) THE AGREED ARRANGEMENTS DO NOT AFFECT
THE LEGAL POSITIONS WITH RESPECT TO LAND
TAXES TAKEN BY THE GOVERNMENT PARTIES
TO THIS AGREEMENT.

D) INsofar as the payment of UTILIZATION
CHARGES AND LANDING FEES FOR THE RHEIN/
MAIN AND STUTTGART/ECHTERDINGEN AIRPORTS
ARE CONCERNED, THE FRG CONFIRMS THAT THE
AGREED ARRANGEMENTS DO NOT INVOLVE ANY
RECOGNITION BY THE USG OF INCREASES IN
BASIC RATES (UTILIZATION CHARGES AND
LANDING FEES) OVER THOSE HITHERTO PAID BY
THE UNITED STATES FORCES. END QUOTE

COMMENT: WE HAVE REMOVED THE IMPLICATION OF US

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OBLIGATIONS CONTAINED IN THE ORIGINAL FRG VERSION.
THE PROTOCOL NOTE MAKES CLEAR THAT THE FRG WILL NO
LONGER CLAIM APPROXIMATELY DM 10 MILLION IN PAST DUE
LAND TAX REIMBURSEMENTS, WHETHER THE FRG HAS
ALREADY PAID THEM OR THE FRG PAYMENT OBLIGATION TO
THE LAENDER IS STILL PENDING. PARTS C AND D SEEK TO
PRESERVE OUR LEGAL POSITION RE LAND TAXES AND TO MAKE
BASIC RATES SET OUT IN THE 1959 RHEIN/MAIN
AGREEMENT THE POINT OF DEPARTURE FOR ANY FUTURE
NEGOTIATIONS ON LANDING FEES AND UTILIZATION CHARGES
AT RHEIN MAIN, AND THE CURRENT US/FRG AGREEMENT ON
STUTTGART/ECHTERDINGEN THE POINT OF DEPARTURE FOR
FUTURE NEGOTIATIONS OF SUCH CHARGES AND FEES FOR
THAT AIRFIELD. WE BELIEVE THAT BY THIS ARRANGEMENT
WE WOULD HAVE PRESERVED OUR RIGHTS AND NEGOTIATING
POSITION AS MUCH AS POSSIBLE, WHILE GETTING A WRITE-
OFF OF DISPUTED LAND TAXES FROM 193 TO 1 JULY
1975. THIS ARRANGEMENT WOULD ALSO POSTPONE OTHERWISE
.IMMINENT FRG PRESSURE FOR INCREASE OF BASIC RATES
IN 1959 RHEIN/MAIN AND CURRENT STUTTGART/ECHTERDINGEN
AGREEMENTS UNTIL 1975.
US DRAFT BEGIN QUOTE

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C O N F I D E N T I A L SECTION 03 OF 03 BONN 05613

THE GOVERNMENT OF THE FRG WILL MAKE
AVAILABLE DM 20 MILLION FOR PAYMENT OF
REAL ESTATE TAXES ON REAL PROPERTY
UTILIZED BY THE US FORCES IN THE FRG
AND AIRPORT UTILIZATION CHARGES AND
LANDING FEES FOR THE USE BY US FORCES
OF RHEIN/MAIN,STUTTGART/ECHTERDINGEN
AND OTHER AIRFIELDS IN THE FRG, PROVIDED
THE GOVERNMENT OF THE UNITED STATES OF
AMERICA HAS ACKNOWLEDGED THE OBLIGATION
TO PAY SUCH TAXES, CHARGES OR FEES.
UTILIZATION OF THESE FUNDS AND THE RELATED
UNDERSTANDINGS WILL BE AGREED UPON BY
EXPERTS OF BOTH GOVERNMENTS.

COMMENT: FRG HAS PROBLEM WITH FACT THAT MONEY IS TO
BE MADE AVAILABLE IN SOME WAY, WHEREAS THEY SEE PURPOS
OF THIS PROVISION AS A WRITE-OFF OR WAIVER OF
PAYMENTS CONSIDERED DUE FROM US TO FRG.
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THERE FOLLOWS US DRAFT TO TAKE ACCOUNT OF POSSIBLE FRG

WILLINGNESS TO ASSUME THESE EXPENSES, PAST AND FUTURE
EVEN BEYOND 30 JUNE 1975: BEGIN QUOTE

A) NOTWITHSTANDING THE INTERPRETATION BY
THE GOVERNMENT OF THE FRG
OF CERTAIN PROVISIONS OF THE SUPPLEMENTARY
AGREEMENT TO THE NATO SOFA, THE GOVERNMENT
OF THE FRG AGREES TO WAIVE ALL PAST AND
FUTURE CLAIMS TO REIMBURSEMENT FROM
THE GOVERNMENT OF THE UNITED STATES OF LAND
TAXES THAT THE FEDERAL GOVERNMENT MAY
ALREADY HAVE PAID OR REIMBURSED OR THAT IT
MAY IN THE FUTURE BE OBLIGED UNDER GERMAN
LAW TO PAY OR REIMBURSE; HOWEVER, THE
UNITED STATES GOVERNMENT WILL CONTINUE TO
REIMBURSE THE FEDERAL GERMAN GOVERNMENT
FOR THE LAND TAXES PAID OR REIMBURSED BY
THE LATTER WITH REGARD TO UNITED STATES
MILITARY FAMILY HOUSING.
B. NOTWITHSTANDING ANY AGREEMENTS BETWEEN
THE FRG AND THE USOF A OR THEIR AUTHORITIES
WITH PROVISIONS CONCERNING THE PAYMENT BY
THE USOF A OF LANDING FEES AND UTILIZATION

CHARGES FOR THE USE BY THE US FORCES OF
GERMAN CIVILIAN AIR-FIELDS, THE GOVERNMENT
OF THE FRG AGREES TO PAY ALL SUCH FEES AND
CHARGES CLAIMED FOR PAST USE OR THAT MIGHT
IN THE ABSENCE OF THIS AGREEMENT BECOME
DUE FROM THE GOVERNMENT OF THE USOFA FOR
FUTURE USE OF SUCH AIRFIELDS. END QUOTE

COMMENT: WE ARE EXPECTING FRG TO PROPOSE LANGUAGE
ASSIGNING A VALUE OF DM 20 MILLION TO THIS UNDERTAKING.
IF WE CAN GET FRG TO AGREE TO THIS PROVISION, WE WILL
HENCEFORTH SAVE THE USG CURRENTLY PAID BASIC
RATES FOR LANDINGS AND UTILIZATION OF RHEIN/MAIN AND
STUTTGART/ECHTERDINGEN, PLUS INCREASES IN SUCH PAYMENTS
WHICH MAY BE UNAVOIDABLE IN NEAR AND MORE DISTANT
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FUTURE. SOME UTILITY MAY IN FUTURE BE OBTAINED FROM
PRECEDENT THAT FRG WOULD, IN EFFECT, BE CREDITING
AGAINST OFFSET THESE CONTINUING LOCAL COSTS. ONLY
PERCEPTIBLE DIFFICULTY WOULD BE DETERMINING FROM YEAR
TO YEAR HOW MUCH IS TRUE OFFSET FOR RECOGNIZED
OTHERWISE OUT-OF-POCKET COSTS, AND HOW MUCH IS NOT,
UNCERTAINTY BEING DUE TO INABILITY TO SAY WITH
CERTAINTY WHAT USG WOULD BE PAYING IN FUTURE AFTER
PROBABLY UNAVOIDABLE AND POSSIBLY RECURRING
RENEGOTIATIONS OF AIRFIELD BASIC RATES. HOWEVER, FRG
MAY SEEK TO LIMIT WAIVER IN A) OF THIS PROPOSAL TO
LAND TAXES ON NAF FACILITIES ONLY AND MIGHT NOT
ACCEPT US URGING THAT PROBLEM BE DEFINITELY RESOLVED
BY IMPOSING NO LIMITS OF THIS KIND.
HILLENBRAND

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